APPENDIX A: MODEL CONTRACT CLAUSES

Introduction

These model provisions are commonly used in State contracts, and where indicated, are prescribed by the Procurement Code or other laws or regulations. In most instances, the clauses may have to be adapted to the particular procurement situation. Brief commentary follows the clauses where the uses of the clause, or possible modifications to the clause, explanatory.

Optional provisions/phrases in the clauses, or those requiring tailored adaptation, are indicated

A. PROVISIONS GENERALLY USED IN ALL CONTRACTS

1. Caption/Whereas Clauses - Form 6-AC-02A (R5/91)

Agency or Department Name
Department or Agency Number
Contract Routing Number

CONTRACT

THIS CONTRACT, Made this ___ day of _____ 1997, by and between the State of Colorado for the use and benefit of the Department of _____ hereinafter referred to as the State and _____ hereinafter referred to as the contractor.

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this contract under Encumbrance Number _____ in Fund Number _____, Appropriation Account _____ and Organization _____.

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies;

WHEREAS, the contractor's [bid] [offer] was selected in accordance with State law as a result of [IFB] [RFP]

WHEREAS, . . .

This "header" and the WHEREAS provisions are required by Fiscal Rule 3-1, which requires use of the Special Provisions. Include the availability and identity of funds, source of legal authority, particular type of contract, procurement method and authority, necessary approvals obtained, etc.

2. Scope of Work

The contractor shall deliver the supplies described in Exhibit A. [supplies]

The contractor shall perform the services described in Exhibit A. [services]

The contractor shall perform the services in accordance with the RFP, Section 8, attached as Exhibit A, and the contractor's proposal, chapter 4, attached as Exhibit B.

If you have competed the contract using an IFB or RFP, attach the relevant portions of the IFB or RFP to the contract as exhibits. If the contractor submitted a proposal that you intend to incorporate, attach the relevant portions of the proposal as an exhibit.

If you have not competed the requirement, you will have to negotiate a statement of work and attach it as an exhibit. See Chapter 2 for a guidance about writing statements of work.

3. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1) Colorado Special Provisions, pages ____ to ____.

2) Contract, pages ____ to ____.

3) The RFP, Exhibit ____.

4) The contractor's proposal, Exhibit ____.

Where exhibits are attached that together define the scope of work, make sure you have a suitable clause that will govern conflicts or inconsistencies between exhibits and language in the contract. Don't rely on this clause to resolve all ambiguities; you have to read all the exhibits and negotiate to clarify any apparent conflicts between the State requirement and how the contractor proposes to do the work. The usual order of precedence is the Special Provisions, contract, RFP or IFB provisions describing the requirement, and the contractor's proposal.

4. Performance Period

The contract shall be effective upon approval by the State Controller, or designee, or on June 1, 1997, whichever is later. The contract performance contemplated herein shall commence as soon as practicable after the effective date of this contract and shall be undertaken and performed in the sequence and manner set forth in the attached [scope of work][specifications] and extend through June 31, 1998. [services]

The contractor shall deliver the supplies [by August 31, 1997][90 days after the effective date of the contract. [supplies]

[Optional] The parties agree that "time is of the essence," and failure of the contractor to complete [delivery of reports][completion of the _____ milestone][performance][delivery] by the date specified shall be grounds for termination for default, subject to adjustment of extension in the time of performance according to the terms of this contract.

[Optional] The term of this contract shall commence and the effective date hereof shall be _____, 19__, and the contract shall terminate _____, 19__, unless either the contractor or the State shall fail to timely execute the contract prior to the said effective date as determined by the date the contract is received for final approval by the State Controller. As prescribed by Section 24-30-202(1), CRS, the effective date shall be the date the contract is approved by the State Controller, and in the event this date is subsequent to the effective date stated in the contract, all provisions relating to time of performance shall be adjusted [and payment therefor shall be reduced proportionately] to account for the reduction of work and services. It is understood the State shall not be liable for payment of work or services nor for costs or expenses incurred by the contractor prior to the proper execution and approval of this contract.

The contract should have a provision that sets the period of performance, in the case of services, and the delivery date, in the case of supplies. The "time is of the essence" clause should be used where time is particularly important, and failure to meet specified deadlines is considered so significant that the contract may be terminated for default. (See the discussion of performance remedies in Chapter 10, Section 7). The second optional clause may be used to deal with automatic adjustment of contract duration for contracts where time is important and dependent on the date of approval by the State Controller or his designee.

5. Price/Cost

The contract price is $25,000. [fixed price]

The State shall pay the contractor at the rates set herein for labor and/or material, not to exceed a ceiling price of $25,000. The contractor will successfully complete the services in accordance with contract requirements within the ceiling price specified herein. [time and material/labor hours contracts]

The State shall reimburse the contractor's reasonable, allowable costs, as defined herein, not exceeding $25,000. [cost reimbursement]

Fiscal Rule 3-1 requires the contract to include a ceiling cost, the maximum amount of money that can be expended on a contract without an amendment.

The first option specifies a firm, fixed price or "lump sum" that is due to the contractor no matter how much it costs the contractor to perform. The second option uses a "time and material" contract, a cost-type contract that requires the State to pay at specified rates for labor and/or material and makes it clear that the contractor must complete performance within the ceiling amount specified.

The final option can be used in either grant or commercial contracts, where the contractor's costs are reimbursed. A commercial cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the State than any other type of contract, see Section 24-103-501, CRS. The tests for "allowability" are set out in the Procurement Code (for commercial contracts) and OMB Circulars (for grants to state and local governments and educational institutions). See the discussion about cost reimbursement contracts in Chapter 5.

6. Payment Terms

[Other than cost reimbursement] Unless otherwise provided, and where appropriate, the State shall establish billing procedures and pay the contractor the contract price or rate for services performed and accepted or supplies delivered and accepted pursuant to the terms of this contract, based on the submission of statements on forms and in a manner prescribed by the State. [Progress payments shall be made monthly based on invoices submitted to and in a form prescribed by the State detailing the amount of costs incurred, but 10% of the amount of costs incurred shall be withheld by the State until final acceptance of the services or supplies under the contract.] Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds. Incorrect payments to the contractor due to omission, error, fraud, or defalcation shall be recovered from the contractor by deduction from subsequent payment under this contract or other contracts between the State and the contractor, or by the State as a debt due to the State.

[Cost reimbursement] The State shall pay reasonable, allocable, allowable costs of performance. Unless otherwise provided, and where appropriate:

A. The State shall establish billing procedures and pay the contractor the reasonable, allocable, and allowable costs for work performed under this contract, based on the submission of monthly statements in the format prescribed by the State. To be considered for payment, billings for payment pursuant to this contract must be received within 60 days after the period for which payment is being requested and final billings on the contract must be received by the

State within 60 days after the end of the contract term.

B. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.

C. In the event this contract is terminated, final payment to the contractor may be withheld at the discretion of the State until completion of final audit.

D. Incorrect payments to the contractor due to omission, error, fraud, or defalcation shall be recovered from the contractor by deduction from subsequent payment under this contract or other contracts between the State and the contractor, or by the State as a debt due to the State. The contractor shall submit requests for reimbursement monthly, stating in the invoice a detailed description of the amounts of services performed, the dates of performance, and amounts and description of reimbursable expenses. [The State procurement rules governing allowability and allocability of cost shall govern.] [The Uniform Administrative Requirements for Grants and Cooperative agreements to State and Local Governments (the "Common Rule"), and the applicable OMB Circulars cited therein, shall govern the allowability and allocability of costs under this contract.] The State [and federal government] reserves the right to audit the contractor's books and records for a period of three years after contract expiration or termination in order to validate the allowability of costs paid under this contract, and any costs not allowable under the State procurement rules shall be reimbursed by the contractor, or offset against current obligations due by the State to the contractor, at the State's election.

Use the first payment clause alternative, modified as necessary to meet your agency requirements, for contracts with a fixed price or fixed rate of payment. The optional provision permits payment of progress payments, see page 6-14 for a discussion of the use of progress payments. Use the second payment clause for cost reimbursement type contracts where payment of allowable, allocable costs up to a specified ceiling cost is specified. Also consider using Clauses B2 and C5 in cost reimbursement contracts for pricing modification and preserving an audit right.

7. Legal Authority

The contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the contractor to its terms. The person(s) executing this contract on behalf of the contractor warrant(s) that such person(s) have full authorization to execute this contract.

Essentially, this clause assures the State that the person the State is dealing with has the authority to bind the contracting party. If the person signing the contract does not have authority, or at least reason to believe he/she has the authority to act on behalf of the contracting party, then very simply, the State cannot hold the contracting party to the terms of

the contract. If the State has been harmed by these circumstances, they may want to sue and, if the signatory does not have authority, these provisions allow the State to hold the person signing the contract personally liable for breach of his or her assurances to the contrary even if the contracting party is not.

8. Rights in Data, Documents, and Computer Software (State Ownership)

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by contractor in the performance of its obligations under this contract shall be the exclusive property of the State and all such materials shall be delivered to the State by the contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of contractor's obligations under this contract without the prior written consent of the State; provided, however, that contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

Not only may there be instances where the State does not wish the work products of the contractor to be made available to any other entity, public or private, but also the contractor is not entitled to any additional profit or benefit where payment for the said products was by public funds, unless the State agency has given its prior approval of the use of the materials.

This clause gives the "ownership" rights in all works, including software, developed or created under the contract. This allocation of rights would be equitable where all development was funded at State expense. If some development is funded at the expense of the contractor, or commercially available software is part of the deliverable, then a modification of the clause is necessary to identify the license rights that exist to the software where the State does not have an ownership interest.

Make sure you not only have "rights," but have also specified the delivery of reports, documents, data, and software somewhere in the contract. Clause B4 is an example of how to specify delivery and format for software documentation.

9. Inspection and Acceptance (Services)

The State reserves the right to inspect services provided under this contract at all reasonable times and places during the term of the contract. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with contract requirements, the State may require the contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by reperformance, the State may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies

available to the State in the termination provisions of this contract, or remedies otherwise available at law.

10. Remedies

In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the contractor substantially fails to satisfy or perform the duties and obligation in this contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by contractor. These remedial actions are as follows:

A. Suspend contractor's performance pending necessary corrective action as specified by the State without contractor's entitlement to adjustment in price/cost or schedule; and/or

B. Withhold payment to contractor until the necessary services or corrections in performance are satisfactorily completed; and/or

C. Request the removal from work on the contract of employees or agents of contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or

D. Deny payment for those services or obligations which have not been performed and which due to circumstances caused by contractor cannot be performed, or if performed would be of no value to the State. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the State.

E. Terminate the contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

This clause is commonly used in service contracts. Although contract law provides for numerous remedies for contract breach, occasionally it may be beneficial to specifically mention some in the contract. Note that the clause begins with "In addition to any other remedies provided for in this contract, and without limiting its remedies otherwise available at law. . ." This specifically does not limit remedies under the contract to those listed. See Chapter 10, Section 7 for a discussion of performance remedies.

11. Termination for Convenience (Short Form)

The State may terminate this contract at any time the State determines that the purposes of the distribution of State moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the

contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.

If the contract is terminated by the State as provided herein, the contractor will be paid an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of the contractor covered by this contract, less payments of compensation previously made, provided, however, that if less than sixty percent (60%) of the services covered by this contract have been performed upon the effective date of such termination, the contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the contractor during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the contractor, the Termination for Cause or Default provision shall apply.

This short form version of the termination for convenience clause is used in contracts with political subdivisions and other contracts not subject to the Procurement Code, and in service contracts having fixed level-of-effort where the State is receiving value as the services are being performed. Janitorial services contracts, for example, would be examples of contracts where this short-form clause may be appropriate, because payment for services in proportion to the performance period completed would fairly reimburse the contractor and still insure that the State receives fair value for its payments. For contracts with commercial entities not meeting these criteria -- e.g. software development/integration contracts involving significant start-up costs -- the Procurement Rules "long form" clause, the next clause in this Appendix, is more appropriate.

Occasionally, contractors will ask to make the termination for convenience clause "mutual," permitting either party to terminate the contract at will by giving specified advance, written notice. In such cases, exercise extreme care, and consider getting legal advice or the assistance of a more experienced purchasing/contracting professional. It is particularly important to consider: the effect of contractor termination on advance or progress payments, and the obligation of the contractor to return them; whether the right of the contractor to compensation after it terminates is clearly stated and requires the State to pay only reasonable compensation for acceptable, completed deliverables having value to the State; whether the milestones and associated progress payments are distinguished from the compensation due the contractor for acceptable, completed services and deliverables after termination, since progress payments are often not sufficiently based on the value of services <u>received</u> by the State; and whether there is procurement authority to acquire replacement or continued services within the needed time. In general, while the termination for convenience clauses in this Appendix are adequate to give the State the right to terminate for convenience, they are not generally adequate to define the contractor's right to terminate at will and receive compensation.

12. Termination for Convenience (Long Form)

<u>Termination</u>

The procurement officer may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The procurement officer shall

give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.

Contractor's Obligations

The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

Compensation

A. The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days from the effective date of termination, the procurement officer may pay the contractor, if at all, an amount set in accordance with subparagraph C of this Section.

B. The procurement officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.

C. Absent complete agreement, under subparagraph B of this Section, the procurement officer shall pay the contractor the following amounts, provided the payments agreed to under subparagraph B shall not duplicate payments under this subparagraph:

    1) Contract prices for supplies or services accepted under the contract;

    2) Costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid to or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have been sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.

    3) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the contractor's obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph B of this Section.

4) The reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the terminated portion of this contract.

5) The total sum to be paid the contractor under this subparagraph C shall not exceed the total contract price plus settlement costs, reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph B, and the contract price of work not terminated.

D. Cost claimed or agreed to under this section shall be in accordance with applicable sections of the Colorado State Procurement Code.

This long form version of the termination for convenience clause is prescribed in the Procurement Rules. The clause "may be varied for use in a particular contract at the discretion of the procurement officer." R-24-106-101-01. See the comments under Termination for Convenience (Short Form) with respect to the proper use of each clause, as well as cautions in making the clauses "mutual" and the contract terminable at will by the contractor.

13. Termination for Default/Cause (Short Form)

If, through any cause, the contractor shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the contractor shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the contractor of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this contract shall, at the option of the State, become its property, and the contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The contractor shall be obligated to return any payment advanced under the provisions of this contract.

Notwithstanding the above, the contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the contractor, and the State may withhold any payment to the contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the contractor is determined.

If after such termination it is determined, for any reason, that the contractor was not in default, or that the contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

This short form termination for default clause is customarily used in contracts with political subdivisions and nonprofit entities.

14. Termination for Default/Cause (Long Form)

Default

If the contractor refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the non-performance, and if not promptly corrected within the time specified, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

Contractor's Duties

Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

Compensation

Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due to the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

Excuse for Nonperformance or Delayed Performance

The contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

Erroneous Termination for Default

If after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

This long form version of the termination for default clause is set forth in the Procurement Rules. The clause "may be varied for use in a particular contract at the discretion of the procurement officer." R-24-106-101-01.

15. Insurance

A. The [contractor][vendor] shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

1) Standard Worker's Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.

2) General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverage:

a) Combined single limit of $600,000 if written on an occurrence basis.

b) Any aggregate limit will not be less than $1,000,000.

c) Combined single limit of $600,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends two years beyond the performance period of the contract.

d) If any aggregate limits are reduced below $600,000 because of claims made or paid during the required policy period, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.

B. The State of Colorado shall be named as additional insured on all liability policies.

C. The insurance shall include provisions preventing cancellation without 60 days prior notice to the State by certified mail.

D. The [vendor][contractor] shall provide certificates showing adequate insurance coverage to the State within 7 working days of award or contract execution, unless otherwise provided.

E. If the contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance.

This insurance clause is prescribed for use by the division of purchasing in all competitive procurements. It is also an advisable clause in any service contract where the contractor is performing services on State property, or other contracting situations where the State may suffer direct damages from performance or be at risk of suit by a third party on an "agency" theory. See the discussion in this chapter for definitions of the different types of insurance, as well as the distinction between an "occurrence based" and "claims made" policy.

16. Independent Contractor Relationship

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONEYS PAID PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

This paragraph and the typeface is required by the Personnel Rules to be used in personal services contracts.

The purpose of the provision is to declare the intent of the parties to establish an independent contractor relationship. Failure to maintain an independent contractor relationship can result in the State being held responsible for income tax withholding and FICA taxes, workers compensation, and other liability of "employers."

17. Representatives and Notice

A. Representatives. For the purpose of this contract, the individuals identified below are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives:

For the State:

_____

Name Title

For the Contractor:

_____

Name Title

It is advisable that the responsible employees of the parties be clearly identified, since it is often necessary for parties to a contract to have a continuous course of dealing as the contract is performed.

This provision is not a delegation of signatory authority for the purposes of contracting initially or entering into modifications or amendments. If you want to specify the specific authority of the representative, do so using a provision substantially like the one that follows. Note that you cannot ever give the representative the authority to amend the contract and commit more funds--you must use an approved modification.

B. Authority. With respect to the representative of the State, such individual shall have the authority to _____, inspect and reject services, approve invoices for payment, and act otherwise for the State, except with respect to the execution of formal amendments to or termination of this agreement pursuant to paragraphs ___ and ___.

C. Notices. All notices required to be given by the parties hereunder shall be hand delivered or given by certified or registered mail to the individuals at the addresses set forth below. Either party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent.

For the State:

Name : _____
Department and Division: _____
Address: _____
_____
_____

For the contractor:

This provision will help avoid practical problems caused by misdirected mail. Several representatives may be listed if necessary. Certified or registered mail are preferred, but regular U.S. Mail is a reasonable alternative. The option of personal delivery of a notice could also be provided for.

18. Assignment and Successors

The contractor agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this contract. Such assignment shall not be deemed valid until receipt by such controller -- as distinguished from the State Controller -- and the contractor assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

Especially in contracts for personal services, but for most State contracts in general, if the State has selected a certain vendor or contractor, it has done so through a process according to the laws governing State contracting in order to allow for fairness to all potential contractors. If the vendor assigns a contract with the State to another party, then the public confidence in the competitive process may be compromised. Section 4-9-318, CRS, permits contractors to assign the right to payment, notwithstanding the existence of a provision in the contract requiring consent to assignment of the contract.

Despite the prohibition on nonconsensual assignment, if a contractor goes into bankruptcy, its accounts and contract may be assigned. If a company reorganizes or merges with another under a different name, it will have successors. The last sentence of this clause assures that these other entities will be bound by the law to complete the contract if the State desires, even though they are not technically parties to the contract.

19. Changes

A written order

By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

1) [Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency in accordance therewith] [description of services to be performed];

2) Method of shipment or packing [time of performance of services]; or

3) Place of delivery or performance of services.

Adjustments of Price or Time or Performance

If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

Failure of the parties to agree to an adjustment

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

Time Period for Claim

Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless such period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

Claim Barred After Final Payment

No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

Without a "changes" clause, the right of the State to direct changes in statement/scope of work or specifications is dependent on the willingness of the contractor to agree to amend the contract. "Changes" clauses give the State a limited right to direct changes to the contract that are "within the scope of the contract." Of course, the contractor would be entitled to an equitable adjustment in price/cost and/or schedule if such a change is ordered. Because the State would be committing to a payment of money by exercising this right, use of the changes clause generally would require review by the Attorney General and approval by the Controller.

Elsewhere in this Appendix is an expanded version of the changes clause that permits a bilateral "change order letter" without the necessity of Attorney General review.

This changes clause, an important right to reserve for the State, could be exercised unilaterally (after approval by the State Controller), although a bilateral change is most common using an amendment or other approved modification format. If you are anticipating use of the clause unilaterally, consult counsel.

20. Price Adjustments

A. Price Adjustment Method. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

1) By agreement on a fixed-price adjustment;

2) By unit prices specified in the contract;

3) In such other manner as the parties may mutually agree; or

4) In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

B. Submission of Cost or Pricing Data**.** The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data Section of the Colorado State Procurement Rules.

If there are any clauses in the contract which give the contractor an adjustment in price/schedule for certain events, the contract should also set out how the adjustment will be done. This clause is set forth in the Procurement Rules for general use, but it "may be varied

for use in a particular contract at the discretion of the procurement officer." R-24-106-101-01.

21. Force Majeure

Neither the contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract "force majeure" means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

"Force majeure" means those events for which neither party will be held accountable. The long-form termination for default clause has an excusable delay provision that also excuses delays caused by the list of "force majeure" events in the clause. Generally, if the long-form termination for default clause is used, this "force majeure clause need not also be added to the contract. The list of events constituting "force majeure" can be negotiated and modified by the parties.

22. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the named contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the contractor that any such person or entity, other than the State or the contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

23. Governmental Immunity

Notwithstanding any other provision of this [contract] to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et.seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et. seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et. seq.*, CRS, as now or hereafter amended.

24. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable,

and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Common law allows for an argument that if any one provision of a contract is deemed invalid, illegal, or inoperative for some other reason, <u>all</u> the provisions in the contract are then suspect and the contract can be rescinded or voided entirely. This clause prevents that argument and allows the State to still hold a contractor liable for parts of the contract that have not been deemed invalid.

25. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

26. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Parties' memories of what was agreed to may get foggy in time and that's why written contracts are valuable. This clause prevents parties from later claiming that there were other provisions agreed to that were not put into the contract. This clause has the effect of saying that, "If it is not written down, it is not valid and the court won't recognize it." Secondly, it makes it clear that changes to the contract must be properly approved and processed under the fiscal rules.

If, at any point after a contract is signed, the parties agree to something different from or in addition to what is contained in the contract, these changes cannot be informally accepted, but must be set forth in writing and embodied in an amendment or approved modification.

27. Survival of Certain Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the contractor.

Examples of these types of long-lived contract terms include: records retention, maintenance and replacement provisions, land use covenants, inspections and certification, indemnification, audit rights, rights in data and software, warranties, etc.

28. Modification and Amendment

This contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

B. MODEL CLAUSES TO BE USED WHEN APPROPRIATE

1. Advance Funds or Payment (Where Approved by the State Controller)

The State shall pay the contractor $_____ within 30 days of State Controller (or designee) approval of this contract. If funds are not used for the purposes herein described by the dates established in this contract, or if the contract is terminated, with or without cause, all such funds shall be immediately returned to the State.

Fiscal Rule 3-1 requires all advance payments to be approved by the State Controller.

2. Cost or Pricing Data

Contractor shall submit cost or pricing data with change or modification proposals where the aggregate increase/decrease in costs plus associated profit exceeds $50,000. "Cost Data" is factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract, such as vendor quotations, non-recurring costs, and unit cost trends, and which can reasonably be expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. "Price Data" is factual information concerning prices for supplies, services, or construction substantially identical to those being procured, including offered or proposed selling prices, historical selling prices, and current selling prices of such items, which can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. The contractor will promptly certify that, to the best of their knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined, specified date on or before the date of conclusion of negotiations. Such certification shall contain a provision that the price to the State, including profit or fee, will be adjusted to exclude any significant sums by which such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

The Procurement Rules require submission of cost or pricing data when modifications exceed $500, although the scope and format of the data are not defined. This clause requires detailed, comprehensive cost or pricing data—and certification of that data—when modifications exceed a specified threshold, one that is high enough to justify the more extensive data required by the clause. See Chapter 5 for a discussion of contract pricing and cost reimbursement contracts in general.

3. Reporting

Unless otherwise provided, in service contracts having a performance term longer than three (3) months, the contractor shall submit, on a quarterly basis, a written program report specifying progress made for each activity identified in the contractor's duties and obligations, regarding the performance of the contract. Such written analysis shall be in accordance with the procedures

developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of the contractor and failure to comply may result in delay of payment of funds and/or termination of the contract. Required reports shall be submitted to the State not later than the end of each calendar quarter, or at such time as otherwise specified.

4. Data and Document Deliverables

The contractor shall deliver, by the dates specified in Exhibit __, the data or documents described therein.

Unless otherwise specified, software documentation shall be delivered that meets the following standards:

A. The documentation shall be in paper, human readable format, which clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages.

B. The documentation shall contain source code in a paper, human readable format, which describes the program logic, relationship between any internal functions, and identifies the disk files which contain the various parts of the code.

C. Detailed "commenting" of source code may be used to partially satisfy the documentation requirements, although documentation shall also include a flow chart which identifies the program flow between files and functions. Comments may be used to document internal flow control in functions.

D. Files containing the source code shall be delivered, or may be left on the host machine so long as the files and their location are identified, and their significance to the program described, in the documentation.

E. Documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated.

It is the intent of the parties that documentation be written so persons reasonably proficient in the use of the program language involved can efficiently use the documentation to understand the program structure, iterative and other control techniques, and decipher error messages should they occur. Within the rights granted elsewhere in this contract, the contractor warrants that the delivered software will be sufficiently descriptive to enable maintenance and modification of the software to permit change to addresses and telephone numbers in computer generated documentation, addition of fields to the database, revisions of report formats, including breakpoints and summary computations, _____.

Contract clauses can give rights in data, documents, and software, but if you haven't ordered the documents, data, or software in the contract, you may have "lots of rights to nothing." One alternative is to reference an Exhibit defining the requirements for data or document delivery. Alternatively, you can specify the content requirements in the contract itself, as has been done in this model software documentation clause. One caveat: before using this

provision, consult with a software programming expert to see if there are better ways, such as use of national standards, with which to specify the requirements for software documentation.

5. Confidentiality of Records

A. [The contractor is hereby designated an agent of the State for the purposes of the confidentiality requirements of Section 8-72-107, CRS.] In the event the contractor shall obtain access to any records or files of the State in connection with agreement, or in connection with the performance of its obligations under this agreement, the contractor shall keep such records and information confidential and shall comply with [Section 8-72-107, CRS, and all other] laws and regulations concerning the confidentiality of such records to the same extent as such laws and regulations apply to the State. [The contractor shall notify its employees that they are subject to the confidentiality requirements as set forth above, and shall provide each employee with a written explanation of the confidentiality requirements before the employee is permitted access to confidential data.]

Under Section 8-72-107, CRS, (1973), the Division of Employment is permitted to give access to its employment records to other governmental agencies and agents of the division "designated as such in writing." This provision imposes on such parties the same confidentiality requirements to which employees of the division are subject. Only the Division of Employment may designate agents for access to confidential employment records.

If the contractor will have access to confidential data other than employment-related information controlled by the State Department of Labor and Employment, use a variation on the above paragraph which removes the statutory citations and references to DOLE, and substitute a requirement that such data will be held confidential unless it is already in the public domain or its release is approved in writing by the State. Eliminate the first sentence regarding agency unless the statute you are referring to expressly permits the granting of agency status to others.

Where it is anticipated that more than a few of the contractor's personnel will be dealing with confidential data, it is usually a good idea to require the contractor to provide each such employee with an explanation of the confidentiality requirements, using a clause similar to the optional sentence at the end of the clause.

B. Except as required by law, the State will not disclose to third persons, other than contractors or consultants of the State whose performance of services require disclosure, any information marked as "confidential" or "proprietary" or otherwise marked as agreed by the parties. Except as otherwise agreed, "confidential" or "proprietary" information of the contractor which may be marked is information relating to its research, development, trade secrets, business affairs, internal operations and management procedures and like information of its customers, clients, or affiliates, but does not include information lawfully obtained from third parties, information in the public domain, exhibits, attachments, or appendices to the contract, or information required to be delivered to the State pursuant to the terms of this contract. With respect to any such disclosure to other contractors or consultants of the State, the State

agrees to inform them concerning the restrictions on disclosure and include suitable nondisclosure provisions in their agreements. Nothing herein is intended or shall operate as a waiver of any applicable law governing disclosure of records, including the Colorado Open Records Act (Section 24-72-101. CRS). The State agrees to provide the contractor with prompt written notice of requests for disclosure under such laws of contract information within the scope of this clause.

6. Applicable Law

The contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable Federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this contract.

7. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it has currently in effect all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform the services and/or deliver the supplies covered by this contract. Contractor warrants that it will maintain all necessary licenses, certifications, approvals, insurance, permits, etc. required to properly perform this contract, without reimbursement by the State or other adjustment in contract price. Additionally, all employees of contractor performing services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. Contractor further certifies that, if it is a foreign corporation or other entity, it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewable of necessary licenses, certifications, approvals, insurance, permits, etc. required for contractor to properly perform this contract, shall be grounds for termination of this contract by the State for default.

8. Availability of Funds – Lease/Purchase and Installment Purchases

A. The parties hereto understand and agree this contract is contingent upon continuing availability of funds as provided in Special Provision Two (2) hereinafter, and that the State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. The State may terminate this contract as provided in the following paragraphs.

B. The State has reason to believe that sufficient funds will be available for the full term of the contract. Where, for reasons beyond State's control, its funding entity does not allocate funds for any fiscal period beyond the one in which this contract is entered into, or beyond a succeeding fiscal period, where State has exhausted efforts to obtain funds legally available for future fiscal periods, and where such failure to obtain funds does not result from any act or failure to act on the part of State, State will not be obligated to make the payments remaining beyond State's then current fiscal period, nor shall State be liable for any penalty therefore. In that event, State shall notify contractor of such non-allocation of funds by sending written notice thereof to the contractor thirty (30) days prior to the effective date of termination.

C. To supplement the provisions of Special Provision paragraph 2 of this contract regarding fund availability, and to make certain the understanding of the parties because the contract will

extend beyond the current fiscal year, State and contractor understand and intend that the obligation of the State to pay the annual charges hereunder constitutes a current expense of the State payable exclusively from State's funds and shall not in any way be construed to be a general obligation indebtedness, or other multiple fiscal year financial obligation whatsoever, of the State of Colorado or any agency or department thereof, within the meaning of any provision of sections 1, 2, 3, 4 or 5 of article XI, Section 20 of article X, of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the State concerning the creation of indebtedness. Neither the State, nor the contractor on its behalf, has pledged the full faith and credit of the State, or any agency or department thereof, to the payment of the charges hereunder, and this contract shall not directly or contingently obligate the State, or any agency or department thereof, to apply money from, or levy or pledge any form of taxation to, the payment of the annual charges.

9. State-furnished Property

A. The State shall deliver to the contractor, for use in connection with and under the terms of this contract, the State-furnished property described in this contract together with any related data and information that the contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "State-furnished property").

B. If State-furnished property is received by the contractor in a condition not suitable for the intended use, the contractor shall, upon receipt of it, notify the State, detailing the facts, and, as directed by the State and at State expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the contractor, the State shall make an equitable adjustment as provided in paragraph (f) of this clause.

C. If damage occurs to State property, the risk of which has been assumed by the State under this contract, the State shall replace the items or the contractor shall make such repairs as the State directs. However, if the contractor cannot effect such repairs within the time required, the contractor shall dispose of the property as directed by State. When any property for which the State is responsible is replaced or repaired, the State shall make an equitable adjustment in accordance with paragraph (f) of this clause.

D. The State and all its designees shall have access at all reasonable times to the premises in which any State property is located for the purpose of inspecting the State property. The contractor shall maintain an inventory and accountability system acceptable to the State, and mark or tag the property in accordance with State procedures.

E. Risk of loss. Unless otherwise provided in this contract, the contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, State property upon its delivery to the contractor. However, the contractor is not responsible for reasonable wear and tear to State property or for State property properly consumed in performing this contract.

F. Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the State may initiate an equitable adjustment in favor of the State. The right to an equitable adjustment shall be the contractor's exclusive remedy. The State shall not be liable to suit for breach of contract for:

1) Any delay in delivery of State-furnished property;

2) Delivery of State-furnished property in a condition not suitable for its intended use;

3) A decrease in or substitution of State-furnished property; or

4) Failure to repair or replace State property for which the State is responsible.

G. Upon completing this contract, or at such earlier dates as may be fixed by the State, the contractor shall submit, in a form acceptable to the State, inventory schedules covering all items of State property (including any resulting scrap) not consumed in performing this contract or delivered to the State. The contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the State property as may be directed or authorized by the State. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the State as the State directs.

For a discussion of contract management considerations when using State-furnished property, see Chapter 10, Section 3.4.

10. Warranties

Contractor warrants that all supplies furnished under this contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturers recommendations or other industry standards, [will function in a failure-free manner for a period of one year from the date of delivery/installation]. Contractor shall, at its option, repair or replace any supplies that fail to satisfy this warranty during the warranty period. Additionally, contractor agrees to assign to the State all written manufacturer's warranties relating to the supplies and to deliver such written warranties to the customer.

11. Disclaimer of Warranties

THE PARTIES HEREBY EXCLUDE ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THIS CONTRACT.

This clause would not normally be inserted in a State contract by the agency. However, contractors may insist on exclusion of implied warranties, although you may be able to get a price concession if you agree to the disclaimer. These implied warranties are defined in sections 4-2-314 and 315, CRS.

12. Limitation of Liability

The express remedies provided herein are the State's sole remedies for breach of any and all warranties and for the contractor's liability arising from the supplies, disaster recovery services, or other services provided hereunder, and any other performance by the contractor under or pursuant to this Agreement. In no event shall the contractor's or its suppliers' contractual liability to the State for damages of any nature exceed the total charges payable under this contract, as it may be amended from time to time. The contractor will not have any responsibility for any product or service provided by persons other than the contractor. This limitation of liability provision, and any other limitation or exclusion of damages in this contract, do not limit or exclude the contractor's liability for intellectual property rights infringement or for death or bodily

injury or damage to tangible property arising out of contract performance and caused by the contractor, its employees, agents, or subcontractors.

This is a typical limitation of liability clause often requested by contractors. DO NOT ROUTINELY USE THESE PROVISIONS IN STATE CONTRACTS. In fact, we recommend that you get the advice of counsel when negotiating these clauses. Notice the final exclusion from the clause. It is State policy that exclusion of damages (e.g. consequential damages) and limitations of liability clauses not limit or exclude the contractor's liability for death or bodily injury or damage to tangible property arising out of contract performance by the contractor, its agents, or subcontractors. See, for example, the State Purchasing Director/State Controller's policy on modification to the purchase order form in the Policy Letters Annex to this manual.

13. Stop Work Orders

Order to Stop Work

The procurement officer may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, as legally extended, the procurement officer shall either:

1) Cancel the stop work order; or

2) Terminate the work covered by such order; or

3) Terminate the contract.

Cancellation or Expiration of the Order

If a stop work order issued under this clause is properly canceled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

1) The stop work order results in increased time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

2) The contractor asserts claim for such an adjustment within 30 days after the end of the period of work stoppage.

Termination of Stopped Work

If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this contract.

14. Liquidated Damages

When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for $_____ [amount to be filled in for each contract] per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the [Excuse for Nonperformance] [Delayed Performance] [Force Majeure] paragraph of the Termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency. [The parties agree that the damages from breach of this contract are difficult to prove or estimate, and the amount of liquidated damages specified herein represents a reasonable estimation of damages that will be suffered by the State from late performance, including costs of additional inspection and oversight, lost opportunity for additional efficiencies that would have attended on-time completion of performance, . . .] Assessment of liquidated damages shall not be exclusive of or in any way limit remedies available to the State at law or equity for contractor breach.

A liquidated damages provision is a contract clause that gives one party the right to withhold payment at an agreed rate per calendar day if the specified performance is late. This right does not exist unless it is in the contract. Use of these clauses is common in construction contracts. They are not commonly used in supply and most service contracts.

Damages for breach [i.e. late performance] by either party can be liquidated in the contract, but only at an amount which is reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty (emphasis added). See Section 4-2-718, CRS.

Place a memorandum in the contract file explaining the rationale for the liquidated damages amount, e.g. the rental costs of substitute facilities or equipment, the labor costs of continued oversight or inspection when services contracts are delayed, lost opportunity for improved efficiencies because of late or unsatisfactory performance, or other specific elements of costs that might have been avoided had performance been completed on-time.

15. Intellectual Property Indemnification

A. Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s), or any part thereof, supplied by contractor under this agreement constitutes infringement of any patent, copyright, trademark, or other proprietary rights, provided that the State gives contractor written notice within twenty (20) days of receipt by the State of such notice of such claim or suit, provides assistance and cooperation to contractor in connection with such action, and contractor has sole authority to defend or settle the claim. Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense. Should the State not choose to participate, contractor shall keep the State advised of any settlement or defense.

B. Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State for all liability incurred by the State as a result of such infringement. Contractor shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction, awarded or agreed to by contractor regarding such claims or suits.

C. If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, contractor, after consultation with the State, shall do one of the following at contractor's expense: (i) produce for the State the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof: or (ii) replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and State specifications; or (iii) suitably modify the products, or part thereof. Except as otherwise expressly provided herein, contractor shall not be liable for any costs or expenses incurred without its prior written authorization.

D. Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon: (i) the use of an altered release if contractor had not consented to the alteration, or (ii) the combination, operation or use of the product(s) with programs or data which were not furnished by contractor, if such infringement would have been avoided if the programs or data furnished by persons or entities other than contractor had not been combined, operated or used with the product(s), or (iii) the use of product(s) on or in connection with equipment or software not permitted under this contract if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.

16. Litigation Reporting

Unless otherwise provided, the contractor shall promptly notify the State in the event that the contractor learns of any actual litigation in which it is a party defendant. The contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves services provided under this contract and which has been filed in any Federal or State court or administrative agency, shall deliver copies of such document to the representative designated in this contract, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the State.

The Executive Director of the contracting agency, as well as the Attorney General's Office, needs to know if the Agency is being sued, or even if the party with which the State is contracting is being sued.

17. Venue

The parties agree that venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

Paragraph 7 of the Special Provisions makes Colorado law the governing law under the contract. This clause requires any court actions to be filed in the City and County of Denver, especially important when you are dealing with corporations whose principal place of business is outside the State of Colorado.

18. Changes (Other than Grants/Subgrants)

By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

1) [Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency in accordance therewith] [description of services to be performed];

2) Method of shipment or packing [time of performance of services]; or

3) Place of delivery or performance of services.

Adjustments of Price or Time or Performance

If any such change order increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

Failure of the parties to agree to an adjustment

Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

Time Period for Claim

Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless such period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

Claim Barred After Final Payment

No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract.

Bilateral Change Order Letters

Bilateral changes within the general scope of the contract may be executed using the simplified change order letter process described in this paragraph and the model letter attached as exhibit _____ for any of the following reasons:

1) Where the agreed changes result in no adjustment to the [price] [ceiling cost], delivery schedule, or other terms and conditions of the contract. The change letter will contain a mutual release of claims for adjustment of price, cost, time for performance, or other terms and conditions, whether based on costs of changed work or direct or indirect impacts on unchanged work, as a result of the change; or

2) Where the changes to the contract are priced based on the unit prices to be paid for the goods or services in [Exhibit ___] [Attachment ___] of the contract; or

3) Where the changes to the contract are priced based on established catalog prices generally extended to the public, or on prices or rates set by law or regulation;

Written bilateral change order letter

The written bilateral change order letter will be substantially in the form at Exhibit ____, must bear the signature of the authorized agency official, the contractor, and--except where the parties agree on the face of the change order that no price/cost, schedule, or other contract adjustments are due the contractor--the State Controller or his designee. The change order letter shall refer to the basic contract and include a detailed description of the changes to the contract, the price or cost ceiling adjustment, the effective date, and (where applicable) the time within which the changed work must be done. Other bilateral modifications to this contract not within the scope of this paragraph must be executed by formal amendment to the contract, approved in accordance with State law.

Without a "changes" clause, the right of the State to direct changes in statement/scope of work or specifications is dependent on the willingness of the contractor to agree to amend the contract. These "changes" clauses give the State a limited right to direct changes to the contract that are "within the scope of the contract." Of course, the contractor would be entitled to a price adjustment or extension in performance time if such a change is ordered. Because the State would be committing to a payment of money by exercising this right, use of a unilateral change would require review by the Attorney General and approval by the Controller.

1. These sample provisions give the State the right to direct changes, and also set up an informal "bilateral" (meaning both parties agree and sign the letter) change procedure that does not have to be treated as a formal contract amendment. So long as the bilateral change satisfies the requirements in the Controller's policy (included in the Policy Letters Annex), these letters do not have to be reviewed by the Attorney General. One key restriction, one that may limit the use of this modification procedure in many commercial contracts, is a requirement that the changes be pre-priced. By Controller policy, bilateral change order letters (not requiring Attorney General review) options are permitted only if the changed

prices are pre-priced in the contract, based on established catalog prices generally extended to the public, or otherwise set by law or regulation.

2. Include the model change order letter on the next page as an exhibit to the contract.

Sample Bilateral Change Order Letter

Exhibit _____

Date: _____

State Fiscal Year 1997-98

Bilateral Change Order Letter No. _____

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between the State of Colorado Department of _____ (_____ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Services/Supplies

Exhibit A, Schedule of Equipment for Maintenance, is amended by adding two (2) 486 Central Processing Units, serial numbers _____ and _____.

Price/Cost

The maximum amount payable by the State for _____[service] [supply]_____ in Paragraph _____ is (increased/decreased) by ($ amount of change) to a new total of ($ _____) based on the unit pricing schedule at Exhibit____. The first sentence in Paragraph____ is hereby modified accordingly;

OR

The parties agree that the changes made herein are "no cost" changes and shall not be the basis for claims for adjustment to [price] [cost ceiling], delivery schedule, or other terms or conditions of the contract. The parties waive and release each other from any claims or demands for adjustment to the contract, including but not limited to price, cost, and schedule, whether based on costs of changed work or direct or indirect impacts on unchanged work. Controller approval of this "no cost" change is not required. ____ contractor initials. ____ Agency initials.

This change to the contract is intended to be effective as of _____, but, except with respect to "no cost" changes identified above, in no event shall it be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before _____ 19____.

Contractor Name:	State of Colorado: Bill Owens, Governor
By: _____ Name _____ Title _____	By: _____ For the Executive Director Colorado Department of _____
APPROVALS:	FOR THE STATE CONTROLLER Arthur L. Barnhart
By: _____ For _____ Division	By: _____ State Controller or Designee

19. Changes (Grants/Subgrants)

The State may prospectively increase or decrease the amount payable under this contract through a "Change Order Letter," approved by the State Controller or his designee, in the form attached hereto as Exhibit __, subject to the following conditions:

A. The Change Order Letter ("Letter") shall include the following:

1) Identification of contract by contract number and affected paragraph number(s);

2) Types of services or programs increased or decreased and the new level of each service or program;

3) Amount of the increase or decrease in the level of funding for each service or program and the total;

4) Intended effective date of the funding change;

5) A provision stating that the change shall not be valid until approved by the State Controller or such assistant as he may designate;

B. Upon proper execution and approval, such letter shall become an amendment to this contract and, except for the general terms and conditions and Special Provisions of the contract, the letter shall supersede the contract in the event of a conflict between the two. It is understood and agreed that the letter may be used only for increased or decreased funding, and corresponding adjustments to service levels and any budget line items.

C. If the contractor agrees to and accepts the change, the contractor shall execute and return the letter to the State by the date indicated in the letter. In the event the contractor does not accept the change, or fails to timely return the executed letter, the State may, upon notice to contractor, terminate this contract effective at any time after twenty (20) days following the return deadline specified in the letter. Such notice shall specify the effective date of termination. In the event of termination, the parties shall not be relieved of their obligations up to the effective date of termination.

D. Increases or decreases in the level of contractual funding made through the letter process during the term of this contract may be made under the following circumstances:

1) If necessary to fully utilize Colorado State appropriations and/or non-appropriated federal grant awards.

2) Adjustments to reflect current year expenditures.

3) Supplemental appropriations or non-appropriated federal funding changes resulting in an increase or decrease in the amounts originally budgeted and available for the purposes of this program.

4) Closure of programs and/or termination of related contracts.

5) Delay or difficulty in implementing new programs or services.

6) Other special circumstances as deemed appropriate by the State.

1. By State Controller policy (included in the Policy Letter Annex to this manual), use of this changes mechanism--which does not contemplate pre-priced rates for the changes--is only permitted for grant contracts with nonprofit organizations and political subdivisions.

2. Attach the model change order letter to the original contract as an exhibit when routing the original contract for approval.

Sample Change Order Letter In Grant/Subgrant Contracts

Exhibit _____

Date: _____

State Fiscal Year 1997-98

Change Order Letter No. _____

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between the State of Colorado Department of _____ (_____ Division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the undersigned agree that the maximum amount payable by the State for non-Medicaid eligible services in Paragraph 24 is (increased/decreased) by ($ amount of change) to a new total of ($_____). The first sentence in Paragraph 24 is hereby modified accordingly.

The services affected by this (increased/decreased) are modified as follows:

The Budget is revised accordingly, as set forth in the Revised Budget, Attachment E (1,2,3), attached and incorporated herein by reference.

This amendment to the contract is intended to be effective as of _____, but in no event shall it be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before _____ 19____.

Contractor Name:	State of Colorado: Bill Owens, Governor
By: _____ Name _____ Title _____	By: _____ For the Executive Director Colorado Department of _____
APPROVALS:	FOR THE STATE CONTROLLER Arthur L. Barnhart
By: _____ For _____ Division	By: _____ State Controller or Designee

20. Options (Performance Extension)

The State may require continued performance for a period of [one year] of any services within the limits and at the rates specified in the contract. The State may exercise the option by written notice to the contractor deposited in the mail before the end of the performance period of the contract using a form substantially equivalent to Exhibit ___. [The State shall give the contractor ____ days preliminary written notice of its intent to execute the option. Preliminary notice does not commit the State to an extension.] If the State exercises this option, the extended contract shall be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

Multiyear procurements may be contracted for in several ways. A contract for one year with the option to "renew" or "extend" has the effect of renewing or extending contract performance beyond the original contract performance period, but it requires an affirmative act by the State to exercise the option and bind the contractor to performance in future years or option periods. If the State fails to follow the contract procedure for exercising the option, the State loses the right to require performance beyond the original contract term.

By contrast, a multiyear contract can be written that obligates the State to pay for contract performance, subject only to availability of funds, over consecutive fiscal years. So long as the legislature appropriates the money, the State is obligated to pay the contractor for continued performance. Theoretically, this kind of a multiyear contract does not require an option provision. However, by agreeing to multiyear contracts, which typically do not include termination for convenience provisions, the State forfeits an important right: the right to make a discretionary decision about whether to permit the contractor to continue performance for an additional period of time. The choice between an "extendible" or "renewable" contract, versus a multiyear contract subject only to appropriation of funds, must be carefully considered. For example, what is the State getting in return for waiving its rights to discontinue performance regardless of funding availability? If you choose a multiyear contract, because the State is getting something of value in return, or there is no other commercially feasible way to structure the contract, normally an annual option exercise letter would not be necessary.

These model provisions are written as "options," preserving the right of the State to decide whether to continue performance by a contractor. Further, these options can be written to permit, not only more performance time, but also more services or supplies. So long as these options are written to comply with the Controller's policy on change orders and modifications (included in the Policy Letters Annex to this manual), these letters do not have to be reviewed by the Attorney General, although they still require approval by the Controller or his designee.

1. By Controller policy, options are permitted only if the option prices for additional services or supplies, or contract extensions, are pre-priced in the contract, based on established catalog prices generally extended to the public, or otherwise set by law or regulation.

2. Attach the following model option letter as an exhibit to the contract.

<u>Sample Option Exercise Letter</u>

Sample Option Exercise Letter

Exhibit _____

Date: _____

TO: [Contractor]
[Address]

SUBJ: Option Exercise Letter

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between the State of Colorado Department of _____ (_____ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the State hereby exercises the option for

[an additional one year's performance period at the (cost) (price) specified in paragraph ___.]

The maximum amount payable by the State in Paragraph ___ is (increased/decreased) by ($ amount of change) to a new total of ($_____). The first sentence in Paragraph ___ is hereby modified accordingly.

State of Colorado:
Bill Owens, Governor

For the Executive Director
Colorado Department of _____

_____
Title

APPROVALS:

By: _____
For _____ Division

FOR THE STATE CONTROLLER
Arthur Barnhart

By: _____
State Controller or Designee

21. Options (Additional Services/Supplies)

The State may increase the quantity of supplies [services] called for in [paragraph __] [the schedule] [Exhibit ___] at the unit price specified therein. The State may exercise the option by written notice to the contractor deposited in the mail [within ____ days of execution of the contract] [not later than 90 days prior to the expiration of the contract, including any of its extension terms,] using a form substantially equivalent to Exhibit ___. [Delivery] [performance] of the added [items] [services] shall continue at the same rate and under the same terms as the like items called for under the contract. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

1. By Controller policy, options are permitted only if the option prices for additional services or supplies, or contract extensions, are pre-priced in the contract, based on established catalog prices, or otherwise set by law or regulation.

2. Attach the following model option letter as an exhibit to the contract.

Sample Option Exercise Letter

Exhibit _____

Date: _____

TO: [Contractor]
[Address]

SUBJ: Option Exercise Letter

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between the State of Colorado Department of _____ (_____ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the State hereby exercises the option for

[maintenance services for three additional 486 CPUs at the prices specified in Exhibit ___.]; or

The maximum amount payable by the State in Paragraph ___ is (increased/decreased) by ($ amount of change) to a new total of ($_____). The first sentence in Paragraph ___ is hereby modified accordingly.

State of Colorado:
Bill Owens, Governor

For the Executive Director
Colorado Department of _____

_____
Title

APPROVALS:

By: _____
For _____ Division

FOR THE STATE CONTROLLER
Arthur L. Barnhart

By: _____
State Controller or Designee

22. Indefinite Quantity Contract

This is an indefinite quantity contract for the [services] [supplies] specified herein. Any estimates of quantities of supplies or services in the solicitation or otherwise made known to the contractor are estimates only and not purchased by this contract. The State will order, and the contractor agrees to perform, services [for maintenance of ____ personal computers during the contract period] [for the minimum quantity specified in the solicitation]. The per unit price for maintenance services is [$_____ per machine per visit] [specified in Exhibit ____] plus the cost of materials, not exceeding $_____ unless otherwise approved in advance by the State. The State has the right, through the representative designated in paragraph ____ of this contract, to order service for additional machines at [the same rate] [rate specified in Exhibit ___], up to a maximum quantity of ____ service calls, in accordance with the ordering provisions of this contract during its period of performance. [The contractor is not obligated to honor maintenance services orders in increments of less than ____ machines per order, greater than _____ machines per order, or a combination of orders within _____ days that exceeds _____ machines.] All orders are subject to the terms of this contract.

Funds are available and encumbered in the amount of _____. The contractor shall not accept any orders which create a financial obligation of the State exceeding the amount of available funds specified herein. [Additionally, the contractor shall notify the representative when State commitments, paid and unpaid, are within 10% of the amount of funds available.] The State is not liable beyond the amount of funds specified as available in this paragraph.

The State may from time to time, in a form substantially equivalent to that in Exhibit _____, and bearing the approval of the State Controller or his designee, make more funds available on this contract. The funds availability letter shall not be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

Indefinite Quantity and Requirements contracts are two types of a broad category of contracts known as "indefinite delivery" contracts. These kinds of contracts obligate the contractor to satisfy contract requirements that are not clear in terms of how much is needed.

A "requirements contract" defines the obligation in terms of all requirements for a service or supply that the State may have. In such an agreement, the consideration for the contractor's promise to satisfy all State requirements is the State's promise--not only to pay at specified rates--but also to place all of its orders to satisfy a requirement through this particular contractor. An example would be a State contract with XYZ Computer Maintenance, Inc. to order all department requirements for computer maintenance through XYZ at maintenance prices/rates set in the contract. The State would usually get better prices in this kind of contact. The "downside" is: the State would breach the contract if the department contracted with another vendor for these services during the life of the contract. Consult counsel for help in language to make a contract a requirements contract.

The other kind of indefinite delivery contract, and the kind that the model provisions are based on, is the "indefinite quantity" contract. This gives the department or agency flexibility to change the amount of services at a specified price or rate, without promising to satisfy all of its requirements through one vendor. In this kind of a contract, in order to make it binding on the contractor, a commercially reasonable (not nominal), minimum order is specified in

the contract. Usually the contract also has a ceiling amount that represents the maximum order. Often, the contract also contains ordering limits, such as a minimum order or maximum order that could be placed at any one time. In this kind of contract, the State has no obligation to order any quantities in excess of the minimum. In the computer maintenance example, the contract might order a minimum of 30 service calls in a fiscal year, with a maximum order available of 100 service calls, all at $50.00 per call. The contract also might provide that the contractor would not be required to honor more than 5 calls in any single day.

The purpose of the attached funding letter is to notify the contractor how much funding has been made available to satisfy orders within the minimum and maximum quantities specified in the contract. In the computer maintenance example, at the time of execution $1,500 would be encumbered initially to cover the minimum quantity. Periodically during performance, more money would be encumbered to cover estimated orders.

1. Attach the following model funding letter to the exhibit portion of the contract.

Indefinite Quantity Contract Funding Letter

Exhibit _____

Date: _____

TO: [Contractor]

SUBJ: Indefinite Quantity Funding Letter No. _____

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between the State of Colorado Department of _____ (_____ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the undersigned commits the following funds to the contract:

The amount of funds available and specified in paragraph ____ is (increased/decreased) by ($ amount of change) to a new total funds available of ($_____) to satisfy orders under the contract. Paragraph ____ is hereby modified accordingly.

This funding letter does not constitute an order for services under this contract.

This funding letter is effective upon approval by the State Controller or such assistant as he may designate.

State of Colorado:
Bill Owens, Governor

By: _____
For the Executive Director
Department of _____

APPROVALS:

By: _____
For _____ Division

FOR THE STATE CONTROLLER
Arthur L. Barnhart

By: _____
State Controller or Designee

23. Task Order Contract

Tasks will be defined, negotiated, and ordered from time to time by agreement of the parties based on the rates in Appendix ___, such task orders hereinafter referred to as "orders". Amendments to terms and conditions, the ceiling amounts specified herein for task orders, or other provisions of the contract other than as specified in this paragraph shall be by formal amendment processed and executed in compliance with the Fiscal Rules and signed by the State Controller or his designee. Orders processed in accordance with this paragraph to add work shall occur as follows:

A. If the State has need of services, and the contractor agrees to provide those services, the State will provide a definition of the requirement to the contractor. The contractor will propose a [price] [cost ceiling] for the task using the rates agreed to and attached as Appendix ___ [attachment ___ to the contractor's proposal]. The proposal shall include the estimated number of hours, material costs, and amount of other elements of cost fixed by the parties in the rates attached as Appendix ____, as well as the proposed time for performance, in a form acceptable to the State.

B. Upon negotiation and agreement by the parties about the scope of the task, the [price] [cost ceiling], and the time for performance, the task order letter attached as Appendix ____ shall be prepared and signed by the parties.

C. Performance of the work, and payment for that work, shall be governed by the standards, procedures, and terms set forth in this contract. Upon negotiation and acceptance of the task order, the contractor warrants that performance will be successfully completed within the time and [price] [cost ceiling] identified in the task order. The State's financial commitment memorialized by the task order letter shall not be effective until signed by the Controller or such assistant as he may designate.

D. The cumulative "not to exceed" amount for all additive tasks under this paragraph shall be $50,000. The State's financial obligation is limited by this amount, and the contractor shall accept no orders which result in a cumulative contract value which exceeds the "not to exceed" value. Amendments to the "not to exceed" amount, and any other modification or amendment to the terms and conditions of this contract other than as specified in this paragraph, must be in writing, executed in accordance with the State Fiscal Rules, and be approved by the Controller or his designee.

Task order contracts let parties agree to the basic terms and conditions of the contract, including the pricing methodology and rates to be used in pricing later tasks. Then, as the specific tasks are identified, the parties negotiate the basic task scope and price. These kinds of contracts are useful when the specific work has not been defined, but a requirement is certain, and the parties are trying to avoid time-consuming contract negotiation every time a task is identified.

The Controller's policy (in the Policy Letter Annex to this manual) allows use of these contracts and execution of specific task orders (without Attorney General review) under certain circumstances. Most notably, the basic pricing rates must be identified in the original contract. Even if your contract cannot satisfy that requirement, though, these contracts can be useful tools in managing complex contracts with changing requirements. If the Controller's policies cannot be satisfied though, tasks would have to be issued using normal amendment procedures.

1. By Controller policy, task order provisions that do not require Attorney General review are permitted only if the rates for negotiating the tasks are pre-priced in the contract, based on established catalog prices generally extended to the public, or otherwise set by law or regulation. Otherwise, tasks must be negotiated and processed as contract amendments.

2. Move the following model task order letter to the exhibit portion of the contract.

TASK ORDER CONTRACTS INTENDED FOR USE BY MULTIPLE AGENCIES AND INSTITUTIONS ARE NOT ALLOWED UNLESS THEY ARE OFFICIAL PRICE AGREEMENTS PROCURED BY THE DIVISION OF PURCHASING. However, these task order provisions are designed to achieve the desired result for individual agency requirements through a master contract approved in accordance with law governing State contracts, which contains a task order or work order format as an exhibit. The contract must state the maximum financial obligation for each year.

Sample Task Order Letter

Exhibit _____

Date: _____

State Fiscal Year 1997-98

Task Order Letter No. _____

In accordance with Paragraph _____ of contract routing number _____, FAA ADA _____, between the State of Colorado Department of _____ (_____ division) and

[Contractor]

covering the period of July 1, 1997 through June 30, 1998 the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Task Order Description

The contractor shall perform the _____ task in accordance with [the following specifications/statement of work] [the contractor's task order proposal dated _____, as amended by amended task order proposal dated _____, both of which are hereby incorporated by reference].

Price/Cost

The [price] [maximum amount payable by the State] for [service] [supply] _____ described above is ($ _____) for a new contract total of ($ _____).

Performance Period.

The contractor will complete the performance in this task order by _____ [date].

This task order is executed pursuant to paragraph ____ of the original contract. The parties agree that all work shall be performed according to the standards, procedures, and terms set forth in the original contract. In the event of any conflict or inconsistency between this amendment and the original contract, such conflict or inconsistency shall be resolved by reference to these documents in the following order: Special Provisions, original contract, attachments/exhibits to the original contract, this task order letter, attachments/exhibits to this task order letter.

This task order is effective as of _____. In no event shall it be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate.

Please sign, date, and return all copies of this letter on or before _____ 19____.

Contractor Name:

By: _____
Name _____
Title _____

APPROVALS:

By: _____
For _____ Division

State of Colorado:
Bill Owens, Governor

By: _____
For the Executive Director
Colorado Department of _____

FOR THE STATE CONTROLLER
Arthur L. Barnhart

By: _____
State Controller or Designee

C. PROVISIONS APPLICABLE TO GRANT-TYPE CONTRACTS

The following clauses are generally applicable to and used in grant-type contracts. However, be aware that although the "Common Rule ("The Common Rule--Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments") specifies requirements generally applicable to grant contracts, m federal programs also levy their own requirements and formats. Clause A6 has optional clauses that incorporate the cost accounting standards that govern federal grants.

1. Federal Funding

This contract is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof. [The parties hereto expressly recognize that the contractor is to be paid, reimbursed, or otherwise compensated with funds provided to the State [by the United States Department of Labor under the Comprehensive Employment and Training Act of 1973, as amended]for the purpose of contracting for the services provided for herein, and therefore, the contractor expressly understands and agrees that all its rights, demands, and claims to compensation arising under this contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate this contract without liability, including liability for termination costs.]

This clause prevents the State from being held accountable for the amount of a contract if the funding is not allocated for some reason. Without this clause, it is unclear whether the State is obligated to pay from other funds where the federal funds are not made available.

This provision limits the liability of the State where particular moneys, such as special grant funds, CETA funds, or developmental grants have been obtained for the purposes of the contract. The State wishes to have no liability beyond the moneys obtained. This would prohibit the contractor from making a claim on general State revenues where an external funding source withholds money or discontinues funding the project. This provision supplements paragraph 2 of the State Special Provisions required by Fiscal Rule.

The language of the paragraph is purposefully general, and can be modified to refer to the particular grant, the funding sources, or to otherwise identify the matter more specifically.

2. Matching Fund Requirements

The contractor shall provide "matching funds," as that term is defined in the [Common Rule][Exhibit A][other provisions of this contract], in the amount of $_____.

3. Legal Authority - Matching Funds

The governing body (City Council; Board of County Commissioners; Corporation Board of Directors; etc.) shall execute and provide to the State a resolution, or other document as appropriate, which: obligates the full amount of the Local Share of the funds required by this contract; and authorizes a specific individual to execute the contract and bind the contractor/grantee to its terms.

This clause supplements the Legal Authority clause. Where the contractor/grantee is required

by the contract to provide matching funds, and especially where the State Agency is contracting for the work instead of merely reimbursing the contractor for the State/Federal share after the contractor has spent its match share in performing the work, State agencies use this provision because the governing body of the contractor has sole authority to obligate/appropriate funds)

4. Maintenance of Records

The contractor shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the operation of programs or the delivery of services under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. All such records, documents, communications and other materials shall be the property of the State, and shall be maintained by the contractor in a central location and the contractor shall be custodian on behalf of the State.

Where the contractor is conducting a program which involves substantial service delivery—especially those benefiting third parties--records may have to be kept. Also, where the State retains an audit right, as in cost reimbursement contracting, records must be maintained. Frequently, it is only through examination of the contractor's records that the State is able to determine if the contractor has, in fact, performed its contract obligations. When such a situation is presented in a particular instance, the contractor should be required to keep records.

5. Audit, Inspection of Records, and Monitoring

The contractor shall permit the State, Federal Government, or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe contractor's records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof, or to evaluate the contractor's performance hereunder. The contractor shall also permit these same described entities to monitor all activities conducted by the contractor pursuant to the terms of this contract. As the monitoring agency may in its sole discretion deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site check, or any other reasonable procedure.

This provision supplements the record-keeping requirement. It is short and general, and can be expanded if circumstances dictate. Your program may have alternative clauses. Note the State's right to monitor the contractor.

6. Federal Examination of Records Clause

Contractor, and its subcontractors and subgrantees, will give the State, the awarding Federal agency, and the Comptroller General of the United States, through any authorized

representatives, access to and the right to examine all records, books, papers, or documents related to the award and contract; and will establish a proper accounting system in accordance with generally accepted accounting standards.

7. Federal Audit Provisions

The Office of Management and Budgets (OMB) Circular No. A-133 Audits of States, Local Governments, and Non-Profit Organizations defines audit requirements under the Single Audit Act of 1996 (Public Law 104-156). All state and local governments and non-profit organizations expending $300,000 or more from all sources (direct or from pass-through entities) are required to comply with the provisions or Circular No. A-133. The Circular also requires pass-through entities to monitor the activities of subrecipients and ensure that subrecipients meet the audit requirements. To identify its pass-through responsibilities, the State of Colorado requires all subrecipients to notify the State when expected or actual expenditures of federal assistance from all sources equal or exceed $300,000.

Confirm that the Cognizant Federal agency has not established a different audit threshold for the program involved. Clause A6 has optional clauses that incorporate the applicable cost accounting standards that govern expenditure of funds under federal grants.

8. Conflict of Interest

The contractor (and subcontractors or subgrantees permitted under the terms of this contract) shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent of the contractor, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1) The employee, officer or agent;
2) Any member of the employee's immediate family;
3) The employee's partner; or
4) An organization which employs, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. The contractor's, subcontractor's, or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

9. Patent Rights - Federal Funds

If any invention, improvement, or discovery of the contractor/grantee or any of its subcontractors or subgrantees is conceived or first actually reduced to practice in the course of or under this contract work, and if such is patentable, the contractor/grantee shall notify the State immediately and provide a detailed written report. The rights and responsibilities of the contractor/grantee, third party contractors, and the State with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations in existence on the date of execution of this contract which define contractor title, right to elect title, federal

government "march in" rights, and the scope of the federal government's right to a nonexclusive, irrevocable, paid-up license to use the subject invention for its own. The contractor/grantee shall include the requirements of this paragraph in its third party contracts for the performance of the work under this contract.

This clause will not grant the State much of a right in any invention reduced to practice during performance of a federally funded contract. Unless the invention is covered by the limited circumstances of a "shop right," the State would likely have little interest in the invention unless an assignment, license, or other allocation of ownership exists pursuant to contract. This clause is intended to invoke federal rules governing title to inventions, and the federal government's rights in those inventions. In a case in which development is expected to be funded with State funds, contact legal counsel for assistance in drafting necessary contract provisions.

10. Rights In Data and Copyright - Federal Reserved Rights

Except for its own internal use, the contractor/grantee shall not publish or reproduce any data/information, in whole or part, that is recorded in any form or medium whatsoever and that is delivered or specified to be delivered under this contract, nor may it authorize or permit others to do so, without the written consent of the federal government, through the State, until such time as the federal government may have released such data/information to the public.

As authorized by 49 CFR 18.34, the federal government, through the State, reserves a royalty free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize the State and others to use: a) any work developed under this contract or a resulting third party contract irrespective of whether or it is copyrighted; and b) any rights of copyright to which a contractor/grantee, sub-recipient, or third party contractor purchases ownership with federal assistance.

11. Grant Assurances

If this contract involves the expenditure of federal funds, the contractor shall at all times during the execution of this contract strictly adhere to and comply with all applicable federal laws and regulations, as they currently exist and may hereafter be amended, which are incorporated herein by this reference as terms and conditions of this contract. The contractor shall also require compliance with these statutes and regulations in subgrant agreements permitted under this contract. The federal laws and regulations include:

- The "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18.

- Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

- The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

- The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation. This act requires that all

laborers and mechanics employed by contractors or sub-contractors that work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

- Standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of $100,000).

- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

- Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

- The Hatch Act (5 USC 1501-1508) and Public Law 95-454, Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

- USC 6101 et seq., 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq.. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds;

- The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213, 47 USC 225 and 47 USC 611.

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of this contract.)

- The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

- The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91;

- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

These grant assurance provisions were taken from the Department of Transportation model provisions. You should check your sister federal agency for required assurances.

12. Federal Certifications

Suspension and Debarment

Certification Regarding Debarment, Suspension, Ineligibility
And
Voluntary Exclusion-Lower Tier Covered Transaction

Instructions for Certifications

1. By signing and submitting its proposal and signing this contract, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted or with whom this contract is made for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting its proposal and signing this contract that should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal and signing this contract that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transaction.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may purse available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion-Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal and execution of this contract, that neither it nor its principals is presently declared ineligible, or voluntarily excluded from participation in this transaction by an Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its proposal.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Certifications

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant and executes the contract. If it is later

determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees that are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

Drug-Free Workplace Certifications

Alternate I. (Grantees Other Than Individuals)

A. The grantee/contractor certifies that it will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition:

2. Establishing an ongoing drug-free awareness program to inform employees about-

   a) The dangers of drug abuse in the workplace;
   b) The grantee's policy of maintaining a drug-free workplace;
   c) Any available drug counseling, rehabilitation, and employee assistance programs; and

d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

3. Making it a requirement that each employee to be engaged in the performance of the grant/contract be given a copy of the statement required by paragraph 1;

4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant/contract, the employee will:

   a) Abide by the terms of the statement; and
   b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant/contract activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant/contract;

6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:

   (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
   (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1,2,3,4,5, and 6.

B. The grantee/contractor may insert in the space provided below the site(s) for the performance of work done in connection with this grant/contract:

_____
_____
_____
_____

Alternate II. (Grantees Who Are Individuals)

1. The grantee/contractor certifies that, as a condition of the grant/contract, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant/contractor;

2. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant/contract activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant/contract.

Certification Regarding Lobbying

(Certification for Contracts, Grants, Loans, and Cooperative Agreements)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an office or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this commitment providing for the United States to ensure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Tobacco Free Certification

Public Law 103-227, the Pro-Children Act of 1994, requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by any entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided by private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. By submitting and signing the application and this contract, the contractor certifies that it will comply with the requirements of the Act. The contractor further agrees that it will require the language of this certification to be included in any subawards which contain provisions for children's services and that all subgrantees shall certify and perform accordingly.

All of these certifications may not be required for particular grant programs, although normally the first three certifications (suspension and debarment, drug free work place, and anti-lobbying) are required. The program administrator should check with the cognizant federal agency, or its implementing regulations, concerning the content of required certifications. Some federal agencies have particular certification forms and instructions for their completion. Some federal agencies have particular certification forms and instructions for their completion. If the certifications are executed as a part of the grant application or proposal submission, they need not also be included in the contract.

D. Special Provisions

These Special Provisions are required by Fiscal Rule 3-1 to be used in every State contract, including grants.

SPECIAL PROVISIONS

CONTROLLER'S APPROVAL

1. This contract shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado or such assistant as he may designate. This provision is applicable to any contract involving the payment of money by the State.

FUND AVAILABILITY

2. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

BOND REQUIREMENT

3. If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the Contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provendor or other supplies used or consumed by such Contractor or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the Contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with CRS 38-26-106.

INDEMNIFICATION

4. To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

DISCRIMINATION AND AFFIRMATIVE ACTION

5. The Contractor agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (CRS 24-34-402), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. *Pursuant thereto, the following provisions shall be contained in all State contracts or subcontracts.*

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, State that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the Contractor's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and rules, regulations, and relevant Orders of the Governor.

(d) The Contractor and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules regulations and orders.

(e) A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment work opportunity because of race, creed, color, sex, national origin, or ancestry.

(f) A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this contract to be discriminatory or obstruct or prevent any person from complying with the provision of this contract or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this contract to be discriminatory.

(g) In the event of the Contractor's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations, or orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Orders, Equal Opportunity and Affirmative Action of April 16, 1975, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (h) in every subcontract and subcontractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any sub-contracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation, with the subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

COLORADO LABOR PREFERENCE

6a. Provisions of CRS 8-17-101 & 102 for preference of Colorado labor are applicable to this contract if public works within the State are undertaken hereunder and are financed in whole or in part be State funds.

b. When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a non-resident bidder from a State or foreign country equal to the preference given or required by the State or foreign country in which the non-resident bidder is a resident. If it is determined by the officer responsible for awarding the bid that compliance with this subsection .06 may cause denial of federal funds which would otherwise be available or would otherwise be inconsistent with requirements of Federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with Federal requirements (CRS 8-19-101 and 102).

GENERAL

7. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

8. At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

9. Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

10. The signatories aver that they are familiar with CRS 18-8301, et. seq., (Bribery and Corrupt Influences) and CRS 18-8-401, et. seq., (Abuse of Public Office), and that no violation of such provisions is present.

11. The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein:

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day first above written.

Contractor:

(Full Legal Name)_____

_____

_____

Position (Title)_____

_____

Social Security Number or Federal Identification Number

If Corporation:)
Attest (Seal)

By_____

Corporate Secretary, or Equivalent, Town/City/County Clerk

STATE OF COLORADO

Bill Owens, GOVERNOR

EXECUTIVE DIRECTOR

DEPARTMENT OF _____

APPROVALS:

ATTORNEY GENERAL

By_____

STATE CONTROLLER

By_____

APPENDIX B: CONTRACT AMENDMENT FORMAT

Introduction

Attached is an appropriate form to use for contract amendments other than real property contracts, or other specialized forms where the "Special Provisions" are not used in the original contract (leases, purchase orders, *etc.*). The term "Special Provisions" means a dedicated section of the contract entitled "Special Provisions" and containing all required contract provisions in Chapter 3 of the Fiscal Rules (Forms 6-AC-02B and 6-AC-02C, or equivalent). Amendments to real property or other specialized forms of agreements should follow the same principles, but each circumstance is so unique as to preclude use of form generalization. Real property lease amendment forms are located in the State Buildings Program Annex.

This form is written so as to eliminate the need to include the entire Special Provisions every time. Further, this form is not a "fill in the blank" form. It is intended to set forth the required provisions for the vast majority of cases. Feel free to put the basic terms into your word processor and create a custom format for each application. This form is not legally required, but much of what it contains is required by law. It has been written for your word processing convenience, and to eliminate the need to include the Special Provisions a second or third time. Bear in mind, however, that material deviation from these basics in any amendment may create legal sufficiency problems. The traditional form of amendment using the Special Provisions remains acceptable. A sample is attached following the simplified format.

The "boiler-plate" amendment provisions are adapted from the State Controller's approved contract forms 6-AC-02A, 6-AC-02B, and 6-AC-02C, the standard "contract," page 1, and the two pages of "Special Provisions."

Note that in the interest of clarity and simplification, the term "WHEREAS" has been omitted in favor of a single heading for the entire section entitled "FACTUAL RECITALS." The purpose of background statements of fact remains a vital part of the contract amendment so this change of form should not cause you to change anything of substance in this portion of the amendment. Be detailed about what caused the need for an amendment and how each side benefits.

Finally, it is important to remember that this form is for use in contracts involving payment of money. While much of it is useful in contracts the Controller is not required to approve, much of the form is not required for non-payment contracts.

If you are using the contract amendment to resolve a dispute or claim submitted by the contractor, see the instructions in Chapter 10, Section 6, Disputes.

Instructions

A. After numbering the amendment at the top, and properly completing the blanks in the opening paragraph and the first Factual Recital of the amendment, tailoring the form to your particular situation begins with the fourth Factual Recital.

B. The fourth and fifth recital paragraphs should contain the reasons amendments or modifications to the original contract are necessary, and what you are trying to accomplish (e.g., the federal government gave the State more money to increase service levels in the program, and it is the parties' intention to increase the amount payable in exchange for additional services). These reasons must be in sufficient detail to ensure there is mutual consideration for each party, otherwise the amendment cannot be approved. Use as many paragraphs as you need to accurately explain the need for the amendment, and why each side benefits from the changes. A final recital may contain the information that each party is agreeable to the proposed modifications or changes.

C. The language inserted under paragraph 3 of the amendment should relate specifically to particular provisions of the original contract by provision number, etc. Remember, an amendment generally may not be retroactive. Also, do not "delete" portions of the original contract" that were completely in effect and valid up to the date of the amendment. Merely supplement, or add, subparagraphs with appropriate language to show the modification or change is intended to be prospective, as of the effective date of the amendment.

D. Amendments must be executed by the same authorized signatories who signed the original contract. This need not be the same individual signatory if he or she is unavailable, but merely one who has proper delegation or authority for each party. Signature authority is discussed in detail elsewhere in this Chapter.

E. <u>One</u> copy of the original contract and any previous amendments must accompany the contract amendment documents through the contract process. The original contract copy will be returned to the agency with the signed and certified counterparts. <u>Please do not route three complete sets of amendment plus original contracts</u>. At least three original amendments must be routed for execution, just as for original contracts. But only one copy of the original contract is required for review; mailing the others merely adds unnecessary weight and expense to the cost of contract processing.

State Controller's memorandum, Contract Modifications, Changes, Amendments, and Approval Routing, January 8, 1997

In June 1996, the State Controller first published a policy concerning permissible modification procedures that could be included in State contracts. Modifications, e.g. options, change orders, and task orders processed in accordance with that policy are not treated as "amendments" and do not require review by the Attorney General. The full text of that policy is in the Policy Letters Annex to this manual. The model clauses in Appendix A comply with that policy.

Amendment Forms

This Appendix contains the model State amendment form. If you intend to use an amendment to settle a claim or dispute with the contractor, read Chapter 10, Section 6, which contains sample release language.

Agency or Department Name
Department or Agency Number
Contract Routing Number

C O N T R A C T A M E N D M E N T #

THIS AMENDMENT, made this _____ day of _____ 19 ___, by and between the State of Colorado for the use and benefit of the Department of _____ ___ hereinafter referred to as the State, and _____, hereinafter referred to as the contractor,

FACTUAL RECITALS

Authority exists in the Law and Funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number _____, Appropriation Code _____, Contract Encumbrance Number_____ ; and

Required approval, clearance, and coordination has been accomplished from and with appropriate agencies; and

The parties entered into a contract dated _____ , for _____, more fully described below.

[Brief statement of facts/reasons for the amendment.]

[Brief statement of intention in amending the contract.]

NOW THEREFORE, it is hereby agreed that

1. Consideration for this amendment to the original contract, CE number _____ , Contract Routing Number _____, dated _____ consists of the payments which shall be made pursuant to this amendment and the promises and agreements herein set forth.

2. It is expressly agreed by the parties that this amendment is supplemental to the original Contract Routing Number _____, dated _____ [as amended _____ , Contract Routing Number _____ , collectively] referred to as the "original contract," which is, by this reference, incorporated, and made a part hereof, and attached as exhibit A, and all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this amendment as though they were expressly rewritten, incorporated, and included herein.

3. It is agreed the original contract is and shall be modified, altered, and changed in the following respects only:

a.

b.

c.

4. The effective date of this amendment is _____, 199_.

5. Except for the "Special Provisions," in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this amendment and any of the provisions of the original contract, the provisions of this amendment shall in all respects supersede, govern, and control. The "Special Provisions" shall

provisions of this amendment shall in all respects supersede, govern, and control. The "Special Provisions" shall always be controlling over other provisions in the contract or amendments. The representations in the Special Provisions concerning the absence of bribery or corrupt influences and personal interest of State employees are presently reaffirmed.

6. FINANCIAL OBLIGATIONS OF THE STATE PAYABLE AFTER THE CURRENT FISCAL YEAR ARE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, AND OTHERWISE MADE AVAILABLE.

7. THIS AMENDMENT SHALL NOT BE DEEMED VALID UNTIL IT SHALL HAVE BEEN APPROVED BY THE CONTROLLER OF THE STATE OF COLORADO OR SUCH ASSISTANT AS HE MAY DESIGNATE.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the day first above written.

Contractor:

_____
(Full Legal Name)

_____
(Signature of Individual)

_____
(Name of Individual)

_____
Position (Title)

_____
Social Security Number
or Federal Employer Identification Number

Attestation

By: _____
Corporate Secretary,
or Equivalent,
Town/City/County Clerk

(Seal)

State of Colorado
Bill Owens, GOVERNOR

By: _____
Executive Director

DEPARTMENT OF _____

APPROVALS

ATTORNEY GENERAL

By: _____

CONTROLLER

By: _____

APPENDIX C: INTERAGENCY AGREEMENT FORMAT

Fiscal Rule 3-1 requires Interagency Agreements to be approved by the State Controller or a delegate, and include as a minimum the following provisions:

1. ***Identification of the parties;***
2. ***Appropriation authority, including fund, State agency, appropriation code, and encumbrance number;***
3. ***Scope of work;***
4. ***Statement of consideration;***
5. ***Payment and other performance; and***
6. ***Definition of breach and remedies.***

INTERAGENCY AGREEMENT

Agency or Department Name
Department or Agency Number
Contract Routing Number

THIS contract, Made this _____ day of _____ 199 __, by and between the State of Colorado for the use and benefit of the Department of _____ hereinafter referred to as [ ], and _____ hereinafter referred to as [ ], _____

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this contract under Encumbrance Number _____ in Fund Number _____, Appropriation Account _____ and Organization Number _____.

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

NOW THEREFORE, it is hereby agreed that

1. Statement of Work and Responsibilities

2. Payment Amount and Billing Procedure

In consideration of the obligation of [the Department] to perform in accordance with paragraph one, [the Department] will transfer $_____ upon satisfactory completion of performance.

3. Term. The term of this interagency agreement is from _____ through _____.

4. Availability of Funds. Payment pursuant to this agreement, if in any part federally funded, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. If any of said federal funds become unavailable, as determined by the department, either party may immediately terminate or seek to amend this agreement.

5. Record Keeping Requirements. [Department or Institution] shall maintain a complete file of all records, documents, communications and other material which pertain to this agreement for a period of three (3) years from the date of final payment under this agreement, unless [the department] requests that the records be retained for a longer period.

6. [The department] shall permit [State agency] and federal agency monitoring and auditing of records and activities which are or have been undertaken pursuant to this agreement.

7. Except as otherwise provided, the duties and obligations of ( ) shall not be assigned, delegated or subcontracted except with the express prior written consent of [the department]. All subcontractors will be subject to the requirements of this agreement.

8. Except as otherwise stated this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns. No third party beneficiary rights or benefits of any kind are expressly or impliedly provided herein.

9. For the purpose of this agreement, the persons named below are designated the representatives of the parties. All notice required to be given by the parties shall be given by registered or certified mail to the representative named below. The parties may designate in writing a new or substitute representative:

[Department]: [Department]

_____ _____

10. Any failure of either party to performance in accordance with the terms of this agreement shall constitute a breach of the agreement. Any dispute concerning the performance of this agreement which cannot be resolved at the divisional level shall be referred to superior departmental management staff designated by each department. Failing resolution at that level, disputes shall be presented to the executive directors of each department for resolution. Failing resolution by the executive directors, the dispute shall be submitted in writing by both parties to the State Controller, whose decision on the dispute shall be final.

11. Any of the parties shall have the right to terminate this agreement by giving the other party _____ days notice. If notice is given, the agreement will terminate at the end of _____ days, and the liabilities of the parties hereunder for further performance of the terms of the agreements shall thereupon cease, but the parties shall not be released from duty to perform up-to-the-date of termination.

12. Controller's Approval. This interagency agreement shall not be deemed valid until it shall has been approved by the State Controller or such assistant as he may designate.

DEPARTMENT OF _____ DEPARTMENT OF _____

_____ _____

Authorized Signature Authorized Signature

APPROVAL

STATE CONTROLLER

_____

APPENDIX D: AGENCY CONTRACT FORMS

THIS SECTION IS RESERVED FOR AGENCY SUPPLEMENTARY MATERIAL, SUCH AS CONTRACT FORMS USED BY THE AGENCY.